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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
Plaintiff)
vs.) No. 1-19-CR-10080
GAMAL ABDELAZIZ and JOHN)
WILSON,)
Defendants.)

BEFORE THE HONORABLE NATHANIEL M. GORTON
UNITED STATES DISTRICT JUDGE
JURY TRIAL - DAY 20

John Joseph Moakley United States Courthouse
Courtroom No. 4
One Courthouse Way
Boston, Massachusetts 02210

October 7, 2021
9:17 a.m.

Kristin M. Kelley, RPR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 3209
Boston, Massachusetts 02210
E-mail: kmob929@gmail.com

Mechanical Steno - Computer-Aided Transcript

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P R O C E E D I N G S

THE CLERK: Thank you. You may be seated. Court so now in session.

THE COURT: Good morning, counsel.

Before I charge the jury, I will rule on several pending matters. First, with respect to the defendants' request that the Court instruct the jury that a, quote, official act, unquote, is required for a conviction of Title 18 of United States Code Section 666, the Court has reviewed the *Martinez* decision rendered earlier this year and does not believe that an official act is required under the federal programs bribery statute. Therefore, the Court denies the defendants' request for an instruction on official abilities in the context of Count 1.

Second, with respect to the jury verdict form, the Court will provide the jury with the verdict form as originally drafted without the defendants' proposed changes. The formatting of defendants' proposed form as it relates to Count 1 is unnecessarily confusing and, furthermore, it is not substantively different from the Court's proposal.

Finally, with respect to the defendants' motion for supplemental jury instructions, docket 2369, the Court will instruct on willful blindness, venue and intent to join the alleged conspiracies, but it will not alter or modify its previously planned instructions on those topics based upon the

1 government's closing argument.

2 Anything needs to come to the attention of the Court
3 before I deliver my charge to the jury?

4 MR. KELLY: Two quick things, your Honor.

5 THE COURT: Mr. Kelly.

6 MR. KELLY: First, I think we had also requested, I
7 don't know where the Court landed or decided on the curative
8 instruction we had proposed.

9 THE COURT: I will include an instruction that deals
09:19 10 with both of those issues.

11 MR. KELLY: Thank you, your Honor.

12 And then I think Mr. Kendall might be raising this,
13 but after the Court instructs, I think we have to preserve any
14 and all objections with the Court under First Circuit
15 procedures. I defer to the Court on how you prefer to do it.

16 THE COURT: We'll do it at sidebar. The jury is going
17 to see us. If you have to take half an hour at sidebar, you're
18 going to take it in front of the jury.

19 MR. KELLY: That's fine by me.

09:19 20 MR. KENDALL: Your Honor, a few things. I believe the
21 Court misspoke when you gave your rulings with respect to
22 *Martinez*. I think you said it was with respect to Count 2.

23 THE COURT: I meant Count 2.

24 MR. KENDALL: Just wanted to clarify that.

25 THE COURT: Thank you.

1 MR. KENDALL: We obviously object to any of the giving
2 of willful blindness instruction.

3 I wanted to raise a couple of concerns, your Honor,
4 that I think arise from the government's closing yesterday.
5 The Court told us they were not going to give an instruction on
6 a corrupt insider, but Mr. Frank did do that. He used the term
7 "corrupt insider" repeatedly. I believe the gist of his
8 closing was that an exchange of an -- an economic exchange that
9 he called a quid pro quo would be the way to look for it to
09:20 10 define the corrupt insider's transaction. As we all know, a
11 simple financial exchange of a "this-for-that" is not a crime
12 in any sense and there has to be something more than that. I
13 think, particularly given that the closing yesterday, there has
14 to be some guidance given to the jury of when is it corrupt for
15 a donation to be made to a university and when is it not
16 corrupt. I think the confusion the government has created has
17 really compounded the need to have that done.

18 THE COURT: Mr. Frank? I'll hear Mr. Frank in
19 response.

09:20 20 MR. FRANK: Your Honor, I think I made it very clear
21 that it's an elicited quid pro quo when it induces an insider to
22 lie to their colleagues in the admissions department to admit a
23 purported athlete based upon falsified athletic credentials.

24 MR. KENDALL: That leads to the second issue, your
25 Honor. I think the government has defined the theft of honest

1 services, I think consistent with your ruling at ECF 2265 at
2 page 5, that it has to be a false statement, the falsified
3 athletic profile has to be an integral part of the honest
4 services violation. The question I have is whose honest
5 services are owed -- I think the Court has to define how are
6 the honest services defined and who are they owed to and who is
7 the victim.

8 With respect to USC, I think the government's theory
9 is that they misled the SUBCO and that the SUBCO is the victim
09:21 10 and that the honest services, I'm not sure if it's the Athletic
11 Department defines the honest services or something else, but
12 there has to be some sort of coherence to what the jury's going
13 to analyze.

14 With respect to the Harvard University charges, the
15 evidence is that the president approved a side-door
16 relationship and there's no information on what the senior
17 women's administrator does, what their role is, what is their
18 obligation of honest services, and what's the admission process
19 that they would be a part of or would be influencing.

09:22 20 With respect to the Stanford counts, there's no
21 information on what is the coach's nature of their employment
22 or their role, same as with senior women's administrator, and
23 no information on the admissions process or how it is being -
24 in either of those two schools, Harvard and Stanford, how is
25 the honest services disrupting or defrauding or creating any

1 problem. There's no there there. I don't think the jury can
2 define honest services just because of its common sense, you
3 know, you're supposed to tell the truth, which is at what point
4 what Mr. Frank tried to bring up with a witness. It has to be
5 imposed by the organization, by the employer. There has to be
6 some clear guidance on the employers of what's to be expected
7 of them. I think the jury needs to be told of because it's so
8 lacking with those issues.

9 And who is it owed to? Is it to the Athletic
09:23 10 Department, the SUBCO, the University as a whole? That's an
11 issue with USC. With Harvard and Stanford, we don't even have
12 enough coherence to know who is the honest services defined by
13 and who is it owed to. That's the next issue.

14 MR. KELLY: We join Mr. Kendall's remarks here, your
15 Honor.

16 MR. KENDALL: I have a few others.

17 THE COURT: Mr. Frank, do you wish to respond?

18 MR. FRANK: Your Honor, Mr. Kendall made these
19 arguments to the Court previously. The Court ruled on them.
09:23 20 He made these comments to the jury. The jury's heard them.
21 They don't become more effective through repetition.

22 THE COURT: Anything further, Mr. Kendall?

23 MR. KENDALL: Yes, your Honor. Again, what is the
24 property that's the object of the theft? We think that was
25 left confusing by the government's closing. Is it the SUBCO's

1 decision to admit someone or is it the coach's recommendation?
2 I think the jury needs to have guidance on whether it's the
3 coach's recommendation or the SUBCO's decision. Particularly,
4 there's a lot of case law that says a mere recommendation or a
5 mere suggestion is not something that can give rise to a theft
6 of honest services. I think we need to define that, have the
7 property defined.

8 The indictment said it was a SUBCO decision. I think
9 the coach's recommendation is a deviation or a variance from
09:24 10 the indictment. I think there needs to be clarity of what it
11 is.

12 And then whose property is it? Is it the
13 University's? Is it a subdivision of the University's?

14 THE COURT: Anything else?

15 MR. KENDALL: The other issue is, your Honor, there is
16 no intent for a federal bribery statute. We want to make sure
17 there's no instruction that an intent would satisfy the
18 evidence required for the federal program bribery. The word
19 "intent" is not part of the statute.

09:25 20 THE COURT: Does the government wish to respond?

21 MR. FRANK: We'll rest on our previous responses, your
22 Honor.

23 THE COURT: All right. Call the jury.

24 (Jury enters.)

25 THE CLERK: Thank you. You may be seated. Court is

1 now in session.

2 THE COURT: Good morning, jurors. You have now heard
3 the evidence and the closing arguments in this case. It is now
4 my duty to instruct you on the law that you must follow and
5 apply.

6 In any jury trial, there are, in effect, two judges.
7 I am one of the judges and you, collectively, are the other.
8 It is my duty to preside over the trial and to determine what
9 testimony and evidence is relevant under the law for your
09:27 10 consideration. It is also my duty at the end of the trial to
11 instruct you on the law applicable to the case.

12 You, as jurors, are judges of the facts. But in
13 determining what actually happened in this case, that is, in
14 reaching your decision on the facts, it is your sworn duty to
15 follow the law as I am about to define it for you. When I have
16 finished, you will begin your discussions with one another,
17 which we call jury deliberations.

18 Now, to help you understand and remember these
19 instructions on the law, I will divide them into three parts:
09:28 20 First, general instructions intended to guide you throughout
21 your deliberations; second, instructions about the Indictment
22 and about the law that determines what the government has to
23 prove in this case; and third, some additional general
24 instructions about procedures that you are to follow during
25 your deliberations.

1 Now, these instructions are somewhat complicated, and
2 I ask you to pay very careful attention. I need to read them
3 because I cannot commit to memory all of the law about which I
4 have to instruct you, but I will submit to you a copy of this
5 charge when you go to the jury room. I want to caution you
6 right away, however, not to dwell on any one particular portion
7 of it, if you decide to refer to it at all, because you must
8 consider these instructions as a whole and not just one
9 individual particular instruction. So I ask you to do your do
09:29 10 the best you can to stay with me.

11 Part one.

12 All of my instructions are about the law you must
13 apply. I do not mean any of these instructions to be
14 understood by you as comment by me on the facts or on the
15 evidence in this case. The defendant in a criminal trial is
16 presumed to be innocent by law, and this presumption stays with
17 both of the defendants throughout the trial and your
18 deliberations.

19 The government has the burden of proving beyond a
09:29 20 reasonable doubt that the defendants then under consideration
21 is guilty as charged. It is for you to decide whether, based
22 upon the evidence before you, the government has met its with
23 respect to the charges against that defendant.

24 You are the judges of the facts. Although the law
25 allows a trial judge in this Court to comment on the evidence,

1 I deliberately do not do so and instead leave the fact-finding
2 entirely in your hands. You are the sole and exclusive judges
3 of the facts.

4 You must not read into these instructions, or anything
5 anything I may have said or done, any suggestions by me as to
6 what verdict you should return. That is a matter entirely for
7 you to decide.

8 Fortunately, do you not need to resolve every dispute
9 of fact raised by the evidence. In order to know which fact
09:30 10 disputes are important, you need to follow what rules of law to
11 apply. I have explained some of those rules to you during the
12 course of the trial, and I will explain others to you now.

13 The lawyers were allowed to comment during their
14 closing arguments on some of these rules of law, but if what
15 they said about the law differs in any way from my
16 instructions, you must be guided only by the instructions on
17 the law as I state testimony.

18 You must follow all of the rules as I explain them to
19 you. A single sentence or statement might not refer to an
09:31 20 exception or a qualification that I have stated elsewhere in
21 these instructions, so you must follow all of these
22 instructions together, as a unit.

23 Even if you disagree with one or more of the rules of
24 law, or don't understand the reasons for them, you are bound to
25 follow them. This is a fundamental part of our system of

1 government by law rather than by the individual views of the
2 judge or jurors who have the responsibility for deciding a
3 case.

4 If I make any mistake in instructing you about the
5 law, fair and even-handed application of the law to this and
6 other cases is nevertheless assured, because any mistake I make
7 on the law is subject to appeal.

8 In contrast, your decision on disputed facts is final.
9 That is, your findings on material disputed facts are not
09:32 10 subject to appeal. You are the final and exclusive judges of
11 the facts.

12 Under your oath as jurors, you cannot allow
13 consideration of the punishment which may be imposed upon the
14 defendant then under consideration, if convicted, to influence
15 your verdict or enter into your deliberations in any way. In
16 addition, you cannot allow considerations of sympathy for that
17 defendant or for the government to influence your verdict or
18 enter into your deliberations in any way. It would be improper
19 for you to allow any feelings you might have about the nature
09:32 20 of the alleged crime to interfere with your decision-making
21 process.

22 You're not to be swayed by bias, prejudice, sympathy
23 or antagonism. Rather, your function is to find the facts
24 fairly and impartially, on the basis of the evidence. The
25 evidence in this case consists of all exhibits received into

1 evidence, all facts that may have been admitted or stipulated
2 to and all of the sworn testimony of the witnesses.

3 If an exhibit purports to summarize underlying
4 material on which it is based, you need to be satisfied that the
5 summary evidence is fair and accurate before relying upon it.

6 As I told you at the beginning of the trial,
7 statements, arguments, objections and questions by lawyers are
8 not evidence. This includes opening statements, in which
9 counsel tell you what the parties expect the evidence will
09:33 10 show. To the extent items were shown to you or recordings were
11 played for you during opening statements that were not
12 subsequently admitted into evidence during trial, you are not
13 to consider those items or recordings as evidence in this case.

14 Also, during the opening statement on behalf of
15 defendant Abdelaziz, the prosecutor mistakenly objected to the
16 defendants' characterization of a document. You are to
17 disregard the government's objection, as well as the reference
18 to that document.

19 Any evidence ordered stricken by the Court must also
09:34 20 be disregarded. Anything you may have seen or heard outside
21 the courtroom, including news stories you may have seen before
22 the trial discussing these or other defendants, is not evidence
23 and you must disregard them entirely. Your verdict must be
24 based solely on the evidence presented in this courtroom and in
25 accordance with my instructions.

1 Also, from the facts proved, you may draw reasonable
2 inferences about additional facts. An inference is a deduction
3 or conclusion. An inference is an additional finding that your
4 experience, reason and common sense lead you to draw from the
5 facts that you find are proved by the evidence.

6 Some exhibits have been redacted in accordance with
7 the Court's rules or orders. You are not to speculate about
8 what has been redacted, nor are you to draw any inferences
9 about those redactions.

09:35 10 It is lawful for the government to obtain evidence
11 through court-obtained or consensual wiretaps. During the
12 course of the trial you have heard certain recorded
13 conversations of the defendants and others made without their
14 knowledge. If you find that the other party to the
15 conversation consented to the recording, the use of this
16 procedure is lawful. The government's use of a
17 court-authorized wiretap to obtain evidence is also lawful.

18 The government is also permitted to use undercover
19 agents, informants, and co-conspirators in its investigations.
09:36 20 Whether or not you approve of certain investigative techniques
21 is not to enter into your deliberations in any way.

22 Now, two more phrases often used in discussions about
23 evidence received in trial are "direct evidence" and
24 "circumstantial evidence".

25 Testimony of a witness showing firsthand observation

1 of a fact by that witness is direct evidence. For example, the
2 testimony of an eyewitness just about what he or she saw is
3 direct evidence. If the witness is permitted to go beyond what
4 he or she saw and permitted to state a conclusion, or an
5 inference, or an opinion, that part of the answer is not direct
6 evidence. Instead, it's a kind of circumstantial evidence.

7 Circumstantial evidence is proof of some facts,
8 including events and circumstances, on the basis of which the
9 jury may infer the existence or nonexistence of additional
09:37 10 facts.

11 For example, let's suppose you've been in this
12 courtroom for a few hours and unable to look outside. A man
13 comes into the back of the courtroom wearing a wet raincoat and
14 carrying a dripping umbrella. You may draw the inference from
15 those circumstances that it is raining outside. That is what
16 we call circumstantial evidence as opposed to direct evidence,
17 which would be the testimony of the man in the wet raincoat
18 taking the witness stand and telling you that it is raining
19 outside.

09:37 20 Direct and circumstantial evidence have equal standing
21 in the law. That is, with respect to what weight shall be
22 given to the evidence before you, the law makes no distinction
23 between direct and circumstantial evidence. No greater degree
24 of certainty is required of circumstantial evidence than of
25 direct evidence. You are to consider all of the evidence in

1 the case and give each item of evidence the weight you believe
2 it deserves.

3 The evidence in this case may include facts to which
4 the lawyers have agreed or stipulated. A stipulation means
5 simply that the government and the defendants accept the truth
6 of a particular proposition or fact and you, likewise, should
7 accept it as true. Because there is no disagreement, there is
8 no need for evidence of that fact apart from the stipulation.
9 As with all evidence, however, you should give the stipulation
09:38 10 whatever weight you believe it deserves.

11 Any inference that you draw from the facts proved must
12 be a reasonable one and not merely conjecture or guesswork.
13 You might decide that you do not have a sufficient basis to
14 decide what inference to draw. It is for you, as judges of the
15 facts, to decide whether the evidence before you is or is not
16 sufficient for you to draw an inference. Ultimately, in
17 drawing inferences, you should use your common sense.

18 If any reference by the Court or by the lawyers to
19 matters of evidence is different from the way you remember the
09:39 20 evidence, let your collective memory control.

21 Now, during this trial you've heard evidence of
22 conversations that were recorded. That is proper evidence for
23 you to consider. In order to help you, I have allowed you to
24 have transcripts to read along as the tapes were played. The
25 tapes are the evidence, not the transcripts. The transcripts

1 are merely to help you understand what is said on the tapes.
2 If you believe at any point that the transcripts say something
3 different from the tapes, remember that it is the tapes that
4 are the evidence, not the transcripts. Any time there is a
5 variation between the tapes and the transcripts, you must be
6 guided solely by what you hear on the tapes and not by what you
7 saw in the transcripts.

8 Now, at times during the trial you heard lawyers
9 object to questions asked of the other lawyer, and to answers
09:40 10 of the witnesses. It is a proper function for lawyers to
11 object. In objecting, a lawyer is requesting that I make a
12 decision on a question of law. Do not draw from the
13 objections, or from my rulings on them, any inferences about
14 facts. The objections and my rulings relate only to legal
15 questions that I had to determine. They should not influence
16 your thinking about the facts.

17 When I sustained an objection to a question, the
18 witness was not allowed to answer. Do not attempt to guess
19 what the answer might have been. And if you heard an answer to
09:40 20 the question before my ruling, you are to disregard it.

21 In your deliberations, do not consider or talk about
22 any question to which I sustained an objection or any other or
23 other statement that I excluded, or struck, or told you not to
24 consider.

25 Also, during the course of the trial I may have made

1 comments to the lawyers or spoken to a witness concerning the
2 manner of his or her testifying. Do not assume from anything I
3 may have said that I have any opinion concerning any of the
4 issues in this case. Except for my instructions to you on the
5 law, you should disregard anything I may have said during the
6 trial in arriving at your own findings of the facts.

7 At the beginning of the trial, I instructed you about
8 taking notes. I remind you that notes taken by any juror are
9 not evidence in the case and must not take precedence over your
09:41 10 independent recollection of the evidence received in the case.
11 Notes are only an aid to recollection and are not entitled to
12 any greater weight than actual recollection or the impression
13 of each juror as to what the evidence actually is.

14 Charts and summaries have been admitted into evidence
15 and were shown to you during the trial for the purpose of
16 explaining facts that are contained in other documents. You
17 may consider the charts and summaries as you would any other
18 evidence admitted during the trial and give them such weight,
19 if any, as you feel they deserve.

09:42 20 A defendant in a criminal case has a constitutional
21 right not to testify and a right not to produce any evidence at
22 all. No inference of guilt, or of anything else, may be drawn
23 from the fact that a defendant did not testify.

24 In this case, both of the defendants have chosen to
25 exercise their right not to testify. It would be improper and

1 unfair for you to speculate as to the reason or reasons why the
2 defendants have so chosen. You must not infer anything
3 whatsoever from their decisions not to testify, and I
4 specifically instruct you that during your deliberations you
5 may not discuss that fact in any manner whatsoever.

6 An important part of your job as jurors will be
7 deciding whether or to what extent you believe what each
8 witness had to say, and how important that testimony was. You
9 are the sole judges of the credibility of the witnesses. In
09:43 10 deciding whether to believe a witness or how much weight to
11 give a witness' testimony, you may consider anything that
12 reasonably helps you assess that testimony.

13 The following are the kinds of questions you may want
14 to consider in evaluating a witness' credibility: Did the
15 person seem honest? Did she or he have some reason not to
16 tell the truth? Did the witness have an interest in the
17 outcome of the case? Did he or she gain any personal advantage
18 by testifying in this case? Did the witness seem to have a
19 good memory? Did the witness' testimony differ from his or her
09:43 20 earlier testimony or from the testimony of other witnesses?
21 Was the witness' testimony different on cross-examination than
22 on direct examination? What was the witness' manner while
23 testifying? These are some, but, of course, not all, of the
24 kinds of things that may help you decide how much weight to
25 give to what each witness had to say.

1 You may also consider any demonstrated bias, prejudice
2 or hostility of a witness in deciding what weight to give to
3 the testimony of that witness.

4 The mere number of witnesses or exhibits or the length
5 of the testimony has no bearing on what weight you are to give
6 to the evidence, or on whether you find that the burden has
7 been met. Weight does not mean amount of evidence. Weight
8 means your judgment about the credibility and importance of the
9 evidence.

09:44 10 There are some persons whose names you have heard
11 during the course of the trial but who did not appear here to
12 testify and as to whom there was no stipulation about what they
13 would testify to if they appeared. Each party had an equal
14 opportunity or lack of opportunity to call any of those
15 persons. Therefore, you should not draw any inferences or
16 reach any conclusions as to what they would have testified had
17 they been called. Their absence should not affect your
18 judgment in any way. You should, however, remember that the
19 law does not impose on a defendant in a criminal case the
09:45 20 burden or duty of calling any witness or producing any
21 evidence.

22 You may consider inconsistencies or differences as you
23 weigh evidence, but you do not have to discredit testimony
24 merely because an inconsistency or difference exists. Two or
25 more witnesses may see or hear things differently. Innocent

1 misrecollection, like failure of recollection, is a common
2 experience. In weighing the effect of any inconsistency or
3 difference, consider whether it concerns a matter of importance
4 or an unimportant detail, and whether it results from innocent
5 error or intentional falsehood.

6 On the other hand, you are not required to accept
7 testimony merely because it is uncontradicted. You may decide,
8 because of a witness' bearing or demeanor or because of
9 inherent improbability, or for whatever reason, that testimony
09:46 10 is not worthy of belief. You may accept all of a witness'
11 testimony or reject all of it, or you may accept part and
12 reject another part.

13 A lawyer who calls a witness to testify in a criminal
14 trial may properly conduct interviews of such a witness before
15 he or she takes the witness stand at trial so as to present the
16 evidence in the case to the jury in an orderly and proper
17 manner.

18 By the same token, a witness may make his own free and
19 voluntary choice to either discuss the case or to refuse to
09:46 20 discuss the case with counsel, whether it be counsel for the
21 government or counsel for a defendant.

22 Accordingly, there is nothing nothing improper in a
23 lawyer interviewing a witness before he or she testifies.
24 There is also nothing improper if a witness elects not to
25 discuss the case with counsel before trial.

1 You have heard testimony of law enforcement officers.
2 The fact that a witness may be employed as a law enforcement
3 officer does not mean that their testimony is necessarily
4 deserving of more or less consideration or greater or lesser
5 weight than that of an ordinary witness.

6 It is also appropriate to consider whether, in their
7 investigation, the particular law enforcement witnesses acted
8 in accordance with the standards of their department or agency.
9 If you find any omissions in the investigation were significant
09:47 10 and not adequately explained, you may consider whether the
11 omissions tend to affect the quality, reliability, or
12 credibility of the evidence presented by the government. It is
13 your decision, after reviewing all of the evidence, whether to
14 accept the testimony of the law enforcement witness and to give
15 that to that testimony whatever weight, if any, you you believe
16 it deserves.

17 You've heard testimony from witnesses who provided
18 testimony under an agreement with the government. A witness
19 who admits to committing a crime and testifies against others
09:48 20 pursuant to a Plea Agreement with the government almost always
21 does so in the expectation or of a more lenient treatment in
22 reward for their cooperation. You should credit testimony of
23 cooperating witnesses with particular caution. A witness
24 testifying in such circumstances may be completely truthful.
25 They also may have had reason to make up stories or exaggerate

1 what others did in order to help themselves. You must
2 determine whether the testimony of such witnesses has been
3 affected by any interest in the outcome of the case, any
4 prejudice for or against the defendants, or by any of the
5 benefits they hope to receive from the government.

6 You may consider the guilty pleas of cooperating
7 witnesses in assessing their credibility, but you are not to
8 consider their guilty pleas as evidence against these
9 defendants in any way.

09:49 10 Now, the defendants in this case are being tried
11 together. Each defendant, however, is entitled to have his
12 guilt or innocence determined on an individual basis. Thus,
13 with respect to each charge, you must assess the evidence
14 against each defendant individually.

15 Sometimes a particular item of evidence will be
16 admitted against one defendant and not the other. You may not
17 consider those items of evident whether determining the guilt
18 or innocence of the defendant against whom they have not been
19 admitted.

09:49 20 You are here to decide whether the government has
21 proven beyond a reasonable doubt that the defendants, Mr. John
22 Wilson and Mr. Gamal Abdelaziz, are guilty of the crimes
23 charged in the Indictment. You are not to be concerned with
24 the guilt or innocence of any other person or persons not on
25 trial as a defendant in this case. It's not unusual for

1 criminal cases to proceed separately against different
2 individuals even if they are allegedly involved in the same
3 offenses or charged in the same indictment with other alleged
4 crimes. You may not speculate as to the reasons why other
5 people are not on trial. Those matters are wholly outside your
6 concern and have no bearing on your function as jurors.

7 A defendant in a criminal case is presumed to be
8 innocent. This presumption is a fundamental part of our legal
9 system and remains with the defendant throughout all stages of
09:50 10 the trial and during your deliberations. It is not overcome
11 unless, all of the -- from all of the evidence in the case, you
12 are unanimously convinced, beyond a reasonable doubt, that the
13 defendant then under consideration is guilty of a specific
14 charge against him. The fact that that has been charged with a
15 crime is not in any sense evidence against him.

16 There is never any burden on a defendant in a criminal
17 case. The law does not require the defendant to prove his
18 innocence or to produce any evidence at all. The burden of
19 proof is on the government throughout the case. It never
09:51 20 shifts to the defendant. If the government fails to meet its
21 burden of proof beyond a reasonable doubt with respect to a
22 specific crime charged against the defendant then under
23 consideration, you must acquit that defendant.

24 If, however, the government meets its burden of proof
25 beyond a reasonable doubt, you have a similar responsibility to

1 find that defendant guilty.

2 As I have said, the burden is upon the defendant to
3 prove beyond a reasonable doubt that the defendant is guilty of
4 the charge against him. This is a strict and heavy burden, but
5 it does not mean that a defendant's guilt must be proved beyond
6 all possible doubt. It does require that the evidence exclude
7 any reasonable doubt concerning a defendant's guilt.

8 A reasonable doubt may arise not only from the
9 evidence produced but also from the lack of evidence.

09:52 10 Reasonable doubt exists when, after weighing and considering
11 all of the evidence, using reason and common sense, jurors
12 cannot say that they have a settled conviction of the truth of
13 a charge.

14 Of course, a defendant is never convicted on suspicion
15 or conjecture. If, for example, you view the evidence in the
16 case as reasonably permitting either of two conclusions - one,
17 that the defendant is guilty as charged, the other that the
18 defendant is not guilty - you will find the defendant not
19 guilty.

09:52 20 It is not sufficient for the government to establish a
21 probability, even if a strong one, that a fact charged is more
22 likely true than not true. That is not enough to meet the
23 burden of proof beyond a reasonable doubt. On the other hand,
24 there are very few things in this world that we know with
25 absolute certainty, and in criminal cases, the law does not

1 require proof that overcomes every conceivable doubt.

2 I instruct you that what the government must do to
3 meet its heavy burden is to establish the truth of each part of
4 the offense charged by proof that convinces you and leaves you
5 with no reasonable doubt and thus satisfies you that you can,
6 consistent with your oath as jurors, base your verdict upon it.

7 If you so find as to the charge against the defendant
8 then under consideration, you will return a verdict of guilty.

9 If, on the other hand, you think there is a reasonable
09:54 10 doubt about whether that defendant is guilty of the offense,
11 you must give him the benefit of that doubt and find him not
12 guilty.

13 It is not against the law to donate money, even large
14 sums, to universities, nor is it against the law to hope that
15 such a contribution will make the admission of one's child to
16 that university more likely.

17 As I have explained, your duty is to apply the law as
18 I define it for you, and determine whether the government has
19 proven beyond a reasonable doubt that the defendant then under
09:54 20 consideration has committed the crimes with which he is
21 charged.

22 The question of whether someone committed an act
23 knowingly or intentionally should never be confused with the
24 motivation for the act. Motive is what prompts a person to act
25 or fail to act. The concept of motive is different than the

1 concept of knowledge or intent. Knowledge or intent refer only
2 to the individual's state of mind in acting or failing to act.

3 The government is not required to prove motive, and
4 good motive, if any, is not a defense when the action or
5 failure to act is a crime. Thus, for the purpose of your
6 deliberations, the motive of a defendant is immaterial except
7 in so far as evidence of motive may aid in the determination of
8 that defendant's state of mind or intent.

9 Now, the Indictment, to which I'll turn next, charges
09:55 10 that the offenses alleged were committed "on or about" certain
11 dates. Although it is necessary for the government to prove
12 beyond a reasonable doubt that the offenses were committed on
13 dates reasonably near the dates alleged in the Indictment, it
14 is not necessary for the government to prove that the offenses
15 were committed precisely on the dates charged.

16 So that's part one.

17 I turn to the Indictment in this case and the statutes
18 on which it has been based. The Indictment is simply a
19 description of the charges against the defendants. It is not
09:56 20 evidence of anything, and you cannot consider it as evidence.

21 An Indictment can allege more than one charge against
22 a defendant. When it does, the different charges are stated
23 separately in what we call "counts". The Indictment in this
24 case has nine counts against the defendants. Some counts are
25 against both defendants, and some are against only Mr. Wilson.

1 You should disregard the gaps in the numbers of counts before
2 you and keep in mind that the number of counts against
3 defendants is not evidence any way and should not be considered
4 as evidence by you.

5 The defendants pled not guilty to the charges and deny
6 committing the crimes. As I have explained, they are presumed
7 innocent and are not guilty with respect to any count unless
8 you unanimously find that the government has proven that
9 defendant's guilt as to that count beyond a reasonable doubt.

09:57 10 Count 1 charges both the defendants with conspiracy.
11 Specifically, it charges the defendants with conspiracy to
12 commit four crimes, or what are called "underlying" or
13 "substantive" crimes. The four underlying or substantive
14 crimes are also known as the "objects" of the conspiracy.

15 Here, they are: One, mail fraud; two, honest services
16 mail fraud; three, wire fraud; and, four, honest services wire
17 fraud.

18 The defendants are accused of conspiring to commit
19 these crimes by engaging in a fraudulent scheme to obtain
09:58 20 property, specifically, admission to the University of Southern
21 California for their children, and to deprive those
22 universities of their intangible right to the honest services
23 of their athletic coaches and university administrators.

24 Count 2 also charges both defendants with conspiracy.
25 It charges them with conspiracy to commit a different crime,

1 federal programs bribery. The defendants are accused of
2 conspiring to commit that crime by corruptly giving, offering
3 and agreeing to give something of value to a person, with
4 intent to influence and reward an agent of an organization that
5 receives more than \$10,000 per year in federal funding, in
6 connection with any business, transaction, or series of
7 transactions of the University of Southern California involving
8 a value of \$5,000 or more.

9 Counts 6, 8 and 9 charge defendant John Wilson with
09:59 10 substantive wire fraud and honest services wire fraud.
11 Mr. Wilson is accused of committing those crimes by engaging in
12 a fraudulent scheme to obtain property, in particular,
13 admission of his daughters to Harvard and Stanford
14 Universities, and to deprive those universities of their
15 intangible right to the honest services of their athletic
16 coaches and university administrators.

17 Counts 11 and 12 charge defendant Wilson with
18 substantive federal programs bribery. Mr. Wilson is accused of
19 committing that crime by corruptly giving, offering and
09:59 20 agreeing to give something of value to a person, with intent to
21 influence and reward an agent of an organization that receives
22 more than \$10,000 per year in federal funding, in connection
23 with any business, transaction, or series of transactions
24 involving anything of value of \$5,000 or more.

25 Count 13 charges defendant John Wilson with filing a

1 false tax return.

2 For each count, the government must prove several
3 things, which we call elements, beyond a reasonable doubt. I
4 will now give you instructions with respect to each count and
5 its elements.

6 Count 1 charges both defendants with conspiracy. In
7 particular, it alleges that the defendants, along with others,
8 conspired to commit, quote, mail fraud and honest services mail
9 fraud (and wire fraud and honest services wire fraud), that is,
10:00 10 having devised and intending to devise a scheme and artifice to
11 defraud and obtain money and property, to wit admission to the
12 (University of Southern California), by means of materially
13 false and fraudulent pretenses, representations, and promises,
14 and to defraud and deprive (USC) of (its) right to the honest
15 and faithful services of (its) athletic coaches and university
16 administrators, through bribes and kickbacks, unquote.

17 The objects of the conspiracy charged in Count 1 are
18 mail fraud, honest services mail fraud, wire fraud, and honest
19 services wire fraud.

10:01 20 I now turn to some general instructions regarding
21 conspiracy that apply to both Counts 1 and 2.

22 A conspiracy is an agreement to commit a crime. The
23 crime of conspiracy is an independent crime, and it is a
24 separate offense from the underlying or substantive crimes that
25 the defendants have allegedly agreed to commit.

1 If there are multiple charged counts of conspiracy,
2 the government does not have to prove that the defendants
3 agreed to commit all of, or even more than one of, the objects
4 in order for you to find them guilty of the conspiracy charge.

5 For example, in the context of Count 1, the government
6 does not have to prove that the defendant then under
7 consideration agreed to commit all four objects of the alleged
8 conspiracy, that is mail fraud, wire fraud, honest services
9 mail fraud, honest services wire fraud, in order for you to
10:02 10 find him guilty of the conspiracy charge. The government must,
11 however, prove that the defendant agreed with one or more
12 persons to commit at least one of the four object crimes, and
13 you must unanimously agree on which object crime that defendant
14 agreed to commit. In making this determination, you must, of
15 course, consider each defendant individually.

16 It is not a defense to a conspiracy charge that the
17 object of the conspiracy could not be achieved because of
18 circumstances that the conspirators did not know about. Thus,
19 you may find the defendants guilty of conspiracy even though it
10:03 20 was impossible for them to carry out their plan successfully.

21 Remember, however, that in order to find a defendant
22 guilty of the charged conspiracy, you must find that the
23 defendant then under consideration intended to commit one of
24 the object offenses, not some other criminal or non-criminal
25 goal.

1 The government must prove that the conspiracy
2 specified in the Indictment, and not some other agreement or
3 agreements, even one involving some of the same alleged
4 conspirators, existed at or about the times specified in the
5 Indictment.

6 A conspiracy requires at least two conspirators. When
7 a coconspirator becomes a government informant, from that point
8 forward he can no longer count as a conspirator. Therefore, an
9 agreement between only an informant and one other individual
10:04 10 does not constitute a conspiracy. If the informant and that
11 other individual had entered a conspiracy before the informant
12 began cooperating with the government, the informant's later
13 cooperation does not change that fact, and any actions
14 predating the informant's cooperation may, if you find by the
15 facts proved, be attributed to that conspiracy.

16 Recall, however, that the Indictment charges both
17 defendants with participation in two overarching conspiracies
18 prized of numerous participants: The fraud conspiracy charged
19 in Count 1, and the bribery conspiracy charged in Count 2.

10:05 20 To find the defendant then under consideration guilty
21 of those counts, you may find that the defendant participated in
22 the conspiracies charged in the Indictment, not some other,
23 possibly smaller conspiracy.

24 Now, some of the events you have heard about in this
25 case happened outside the Commonwealth of Massachusetts. There

1 is no requirement that the entire conspiracy charged in either
2 Count 1 or Count 2 took place here in Massachusetts, or that
3 either agreement was entered into here. For you to return a
4 guilty verdict on the conspiracy charged in Count 1, however,
5 you must find that the government has proved by a preponderance
6 of the evidence that at least part of the conspiracy charged in
7 Count 1 took place in Massachusetts.

8 Unlike every other element in this case, venue
9 requires proof only by a preponderance of the evidence. That
10:06 10 means you need be convinced only that it is more likely than
11 not that part of the conspiracy took place in Massachusetts.
12 That standard of proof does not alter in any way the
13 requirement that the government must prove every other element
14 of each count beyond a reasonable doubt.

15 For you to find a defendant guilty of the conspiracy
16 charged in Count 1, you must be convinced that, as to that
17 defendant, the government has proven each of the following
18 elements beyond a reasonable doubt.

19 First, that the agreement specified in the Indictment,
10:06 20 and not some other agreement or agreements, existed between at
21 least two people to commit at least one of the following: Mail
22 fraud, wire fraud, honest services mail fraud or honest
23 services wire fraud. And second, that the defendant willfully
24 joined the agreement.

25 With respect to the first element, a conspiracy is an

1 agreement, spoken or unspoken. The conspiracy does not have to
2 be a formal agreement or plan in which everyone sat down
3 together and worked out all the details. But the government
4 must prove beyond a reasonable doubt that those who were
5 involved shared a general understanding about the crime. Mere
6 similarity of conduct among various people, or the fact that
7 they may have associated with each other or discussed common
8 interests does not necessarily establish proof of the existence
9 of a conspiracy, but you may consider such factors.

10:07 10 The government does not have to prove that the
11 conspiracy succeeded or that the objects were achieved. A
12 conspiracy is complete, and the crime of conspiracy has
13 occurred, once the agreement to commit the underlying crime has
14 been reached.

15 To act willfully for the purposes of Count 1 means to
16 act voluntarily and intelligently and with the specific intent
17 that the underlying crime or crimes be committed; that is to
18 say, with bad purpose, either to disobey or disregard the law,
19 not to act by ignorance, accident, or mistake.

10:08 20 The government must prove two kinds of intent beyond a
21 reasonable doubt before the defendants can be said to have
22 willfully joined the conspiracy: An intent to agree and an
23 intent, whether reasonable or not, that the underlying crime or
24 crimes be committed. Proof that the defendant willfully joined
25 the agreement must be based upon evidence of his own words and

1 actions.

2 You need not find that the defendant then under
3 consideration agreed specifically to or knew about all the
4 details in the crime, or knew every other coconspirator or
5 played a major role, but the government must prove beyond a
6 reasonable doubt that he knew the essential features and
7 general aims of the venture.

8 Even if that defendant was not part of the agreement
9 at the very start, he can be found guilty of the conspiracy if
10:09 10 the government proves that he willfully joined the agreement
11 later.

12 On the other hand, a person who has no knowledge of
13 the conspiracy but simply happens to act in a way that furthers
14 some object or purpose of the conspiracy does not thereby
15 become a coconspirator.

16 As I have previously noted, Count 1 of the Indictment
17 charges the defendants with conspiracy to commit mail and wire
18 fraud, as well as honest services mail and wire fraud. These
19 crimes are the underlying crimes alleged to have been the
10:09 20 objects of the conspiracy charged in Count 1.

21 As I will explain to you in a moment, mail and wire
22 fraud on the one hand, and honest services mail and wire fraud
23 on the other hand, are different crimes. Title 18 Section 1349
24 of the United States Code makes it a crime to conspire to
25 commit both mail and wire fraud, and honest services mail and

1 wire fraud.

2 I will now explain the elements of the object crimes.

3 The crimes of mail fraud, described in Section 1341 of
4 Title 18 of the United States Code, and wire fraud, described
5 in Section 1343 of Title 18 of the United States Code, have
6 three elements. Elements are as follows:

7 First, that there was a scheme, substantially as
8 charged in the Indictment, to defraud or obtain money or
9 property by means of false and fraudulent pretenses;

10:10 10 Second, that the scheme to defraud involved the
11 misrepresentation or concealment of a material factor matter,
12 or the plan to obtain money or property by means of false or
13 fraudulent pretenses involving a false statement, assertion,
14 half-truth, or knowing concealment as to a material factor
15 matter;

16 Third, that the defendant knowingly and willfully
17 participated in this scheme with the intent to defraud;

18 Fourth, that, for the purpose of executing the scheme
19 or in furtherance of the scheme, the defendant caused the
10:11 20 United States mail to be used, or it was reasonably foreseeable
21 for the purpose of executing the scheme or in furtherance of
22 the scheme, the United States mail or delivery by a private or
23 commercial interstate carrier (for the mail fraud) or an
24 interstate wire communication (for the wire fraud) would be
25 used.

1 I will now describe the four elements of mail and wire
2 fraud in more detail.

3 The first element that the government must prove
4 beyond a reasonable doubt is that there was a scheme to defraud
5 or to obtain money or property by false and fraudulent
6 pretenses.

7 A "scheme" includes any plan, pattern, or course of
8 action.

9 The term "defraud" means to deceive another in order
10:12 10 to obtain money or property by misrepresenting or concealing a
11 material fact.

12 The term "false or fraudulent pretenses" means any
13 false statements or assertions that were either known to be
14 untrue when made or were made with reckless indifference to
15 their truth and that were made with the intent to defraud. The
16 term includes all actual, direct false statements as well as
17 half-truths, the knowing concealment of facts, and the knowing
18 omission of material facts.

19 The term "property" in this case relates to the
10:12 20 admission of students to the Universities. For purposes of the
21 mail and wire fraud statutes, admission slots are the property
22 of the Universities.

23 It is not necessary for the government to prove that
24 the defendant then under consideration realized any gain from
25 the scheme or that the intended victim, in this case, the

1 University of Southern California, suffered any loss, so long
2 as the goal of the scheme was to deprive the victim of money or
3 property. You are not required to agree on the means or a
4 particular false statement that a defendant used to carry out a
5 fraudulent scheme.

6 Furthermore, there is no requirement that the person
7 or entity deceived be the same person or entity who is deprived
8 of money or property, nor that the particular defendant knew
9 the identity of the fraud victim.

10:13 10 The government is also not required to prove that a
11 particular defendant or defendants originated the scheme to
12 defraud. A scheme to defraud need not be shown by direct
13 evidence but may be established by all of the circumstances and
14 facts in the case.

15 The second element of mail fraud and wire fraud is
16 that the false representation or fraudulent failure to disclose
17 relate to a material fact. A fact or matter is "material" if
18 it has a natural tendency to influence or be capable of
19 influencing the decision of the decision-maker to whom it was
10:14 20 addressed. Put differently, if you find that a fact was
21 intentionally withheld or omitted, you must determine whether
22 the fact was one that a reasonable person might have considered
23 important in making his or her decision, although the
24 government need not prove that anyone actually relied on the
25 statement or omission.

1 The third element of mail fraud and wire fraud is that
2 the defendant knowingly and willfully participated in this
3 scheme with the intent to defraud. Defendants acted
4 "knowingly" if they were conscious and aware of their actions,
5 realized what they were doing and what was happening around
6 them, and did not act because of ignorance, mistake, or
7 accident.

8 In deciding whether the defendant then under
9 consideration acted knowingly, you may infer that the defendant
10:15 10 had knowledge of a fact if you find that he deliberately closed
11 his eyes to a fact that otherwise would have been obvious to
12 him.

13 In order to infer knowledge, you must find that two
14 things have been established: First, that the defendant was
15 aware of a high probability of the fact in question and,
16 second, that the defendant consciously and deliberately avoided
17 learning of that fact. That is to say, the defendant willfully
18 made himself blind to that fact.

19 It is entirely up to you to determine whether a
10:16 20 defendant deliberately closed his eyes to a fact and, if so,
21 what inference, if any, should be drawn. However, it is
22 important to bear in mind that mere negligence or mistake in
23 failing to learn a fact is not sufficient. You cannot convict
24 the defendant upon a finding that he should have known, or that
25 a reasonable person would have known, an illegal act was taking

1 place. There must be a deliberate effort to remain ignorant of
2 the fact.

3 The third element of mail and wire fraud requires not
4 only the defendant then under consideration knowingly
5 participated in the scheme, or was willfully blind to it, but
6 also that the defendant acted willfully. You should not
7 confuse willful blindness, which concerns a defendant's
8 knowledge, with acting willfully, which concerns a defendant's
9 intent, and to which I will turn now.

10:17 10 To act "willfully" means to act voluntarily and
11 intelligently and with the specific intent to do something that
12 forbids, that is to say, with bad purpose either to disobey or
13 disregard the law and not by ignorance or mistake. Intent may
14 be inferred from the surrounding circumstances.

15 Here, the government must prove that the defendant
16 acted with a specific intent to defraud. Conversely, if that
17 defendant acted in good faith, he cannot be guilty of the
18 crime. The burden to prove intent, as with all other elements
19 of the crime, rests with the government.

10:17 20 Intent or knowledge may not ordinarily be proven
21 directly because there is no way of directly scrutinizing the
22 workings of the human mind. In determining what a particular
23 defendant knew or intended at a particular time, you may
24 consider any statements made or acts done or omitted by that
25 defendant, and all other facts and circumstances received in

1 evidence that may aid in your determination of his knowledge or
2 intent. You may infer, but you certainly are not required to
3 infer, that a person intends the natural and probable
4 consequences of acts knowingly done or knowingly omitted. It
5 is entirely up to you, however, to decide what facts are proven
6 by the evidence received during this trial.

7 As to the fourth element of mail fraud and wire fraud,
8 the government must prove that for the purpose of executing the
9 scheme or in furtherance of the scheme, the defendant caused to
10:18 10 be used, or it was reasonably foreseeable that for the purpose
11 of executing the scheme or in furtherance of the scheme the
12 mail or an interstate wire communication would be used.

13 A mailing can be via the United States mail or
14 delivery by a private or commercial interstate, such as UPS or
15 FedEx. An interstate wire communication includes a telephone
16 communication from one state to another, an e-mail transmission
17 or other internet communication, or a financial or wire
18 transaction from one state to another.

19 The mailing or interstate wire communication does not
10:19 20 itself have to be essential to the scheme, but it must have
21 been made for the purpose of carrying it out. There is no
22 requirement that the particular defendant himself was
23 responsible for the mail or wire communication, that the mail
24 or wire communication itself was fraudulent, or that the use of
25 the mail or wire communication in interstate commerce was

1 intended as the specific or exclusive means of accomplishing
2 the alleged fraud. But the government must prove beyond a
3 reasonable doubt that the defendant then under consideration
4 knew, or could reasonably have foreseen, that use of the mail
5 or wire communication would follow during the scheme, in
6 furtherance of the scheme, or for the purpose of executing the
7 scheme.

8 As I noted earlier, count one of the Indictment also
9 charges the defendants with conspiracy to commit honest
10:20 10 services mail fraud and honest services wire fraud.

11 Specifically, the defendants are charged with agreeing to
12 deprive the relevant universities of the intangible right to
13 the honest services of their athletic coaches and university
14 administrators.

15 Honest services mail fraud is defined by two statutes,
16 the first of which is the mail fraud statute that I previously
17 noted. Similarly, honest services wire fraud is also defined
18 by two statutes, the first of which is the wire fraud statute
19 that I previously noted.

10:21 20 The second relevant statute for both crimes is
21 Section 346 of Title 18 of the United States Code, which
22 provides that the term "scheme to defraud", as set forth in the
23 mail and wire fraud statutes - in the context of honest
24 services fraud - includes a "scheme to deprive another of the
25 intangible right of honest services".

1 Taken together, the mail fraud statute and the honest
2 services fraud statute constitute the offense of honest
3 services mail fraud. Similarly, taken together, the wire fraud
4 statute and the honest services fraud statute constitute the
5 offense of honest services wire fraud. The four elements of
6 these offenses are as follows:

7 First, that the defendant knowingly devised or
8 participated in a scheme to defraud the relevant universities
9 of their intangible right to the honest services of their
10:22 10 athletic coaches and/or university administrators, through
11 bribery or kickbacks;

12 Second, that the defendant knowingly and willfully
13 participated in that scheme with the intent to defraud;

14 Third, that the scheme to defraud involved the
15 misrepresentation or concealment of a material factor matter,
16 or the omission of a material factor matter, or the scheme
17 involved a false statement, assertion, half truth, or knowing
18 concealment concerning a material factor matter; and

19 Fourth, that, for the purpose of executing the scheme
10:22 20 or in furtherance of the scheme, the defendant caused to be
21 used, or it was reasonably foreseeable that for the purpose of
22 executing the scheme or in furtherance of the scheme, the
23 United States mail or delivery by a private or commercial
24 interstate carrier (for honest services mail fraud) or an
25 interstate wire communication (for the honest services wire

1 fraud) would be used.

2 I have already instructed you on elements two, three
3 and four of honest services mail fraud and honest services wire
4 fraud, which are the same as mail fraud and wire fraud,
5 respectively, and I will not repeat those instructions here.

6 The first element of honest services counts is,
7 however, different. The first element that the government must
8 prove is that the defendant then under consideration knowingly
9 devised or participated in a scheme to defraud the relevant
10:23 10 universities of their right to the honest services of their
11 athletic coaches and/or university administrators through
12 bribery or kickbacks.

13 As I previously described, a "scheme" is any plan or
14 course of action formed with the intent to accomplish some
15 purpose. Thus, to find a defendant guilty of this offense, you
16 must find that he devised or participated in a plan or course
17 of action involving bribes or kickbacks given or offered to
18 athletic coaches and/or administrators of the Universities.
19 Without a bribe or a kickback, there cannot be an honest
10:24 20 services fraud.

21 An employee owes a fiduciary duty to his or her
22 employer. This fiduciary duty is a duty to act only for the
23 benefit of the employer, and not for the employee's own
24 enrichment or benefit. When an employee devises or
25 participates in a bribery or kickback scheme, that employee

1 violates his employer's right to his honest services. This is
2 because the employee outwardly purports to be working solely
3 for the employer, but instead has received benefits from a
4 third party. The employer is defrauded because the employer is
5 not receiving what it expects and is entitled to, namely, the
6 employee's honest services.

7 The breach of the fiduciary duty must be by
8 participation in a bribery or kickback team - which involves
9 the actual, intended, or solicited exchange of a thing of value
10:25 10 for something else, in other words, a quid pro quo (which is a
11 Latin phrase meaning "this for that" or "these for those").
12 The employee or fiduciary and the individuals providing the
13 things of value need not, however, state the quid pro quo in
14 express terms. Rather, the intent to exchange may be
15 established by circumstantial evidence, based upon the
16 defendant's words, conduct, acts, and all the surrounding
17 circumstances disclosed by the evidence and the rationale or
18 logical inferences that may be drawn therefrom.

19 Bribery and kickbacks require the intent to affect an
10:26 20 exchange of something of value for, as applicable here, an
21 official act, but each payment need not be correlated with a
22 specific action. The requirement that there be payment of a
23 thing of value in return for action is satisfied so long as the
24 evidence shows "a course of conduct" of things of value flowing
25 to an employee or fiduciary in exchange for the repeated action

1 of the employee/fiduciary. All that must be shown is that
2 things of value were provided to the employee or fiduciary, or
3 for his or her benefit, with the intent of securing the action
4 of the employee/fiduciary in return.

5 A bribe is simply a payment or other benefit given in
6 exchange for an employee's provision of influence or favorable
7 treatment from his employer. Payments to third parties,
8 including even employer universities, may qualify as bribes or
9 kickbacks.

10:27 10 An official act is a decision or action, or action, or
11 an agreement to make a decision or take an action, on any
12 matter within the scope of the employee's duties. The matter
13 must be specific and focused and involve a formal exercise of
14 the organization's power. A decision or action constituting an
15 official act may include using one's official position to exert
16 pressure on another official to perform an official act, or
17 advise another official knowing that such advice will form the
18 basis for an official act.

19 The government need not prove that the scheme succeed
10:28 20 he had, or that anything of value was exchanged. Rather, the
21 government must only prove that the defendant then under
22 consideration knowingly devised or participated in a scheme to
23 defraud the Universities of their right to the honest services
24 of their employee or fiduciary through bribes or kickbacks.

25 I'm going to stop at this point and ask my deputy to

1 distribute the verdict form, which you will have when you
2 retire to the jury room.

3 All right. You'll see that this is a court document
4 entitled "Verdict Form". It says at the top "We, the jury,
5 unanimously find". Then there are eight questions. We'll go
6 through them one by one.

7 The first question says "The defendant under
8 consideration on the charge of conspiracy to commit mail fraud
9 (Count 1)", and then there's a place for Mr. Abdelaziz, not
10:30 10 guilty or guilty, and Mr. Wilson, not guilty or guilty.

11 Each successive question refers to a different crime.

12 The second question to wire fraud, as you'll see, as
13 opposed to mail fraud.

14 The third question is honest services mail fraud.
15 Over to page 2, the question has to do with honest services
16 wire fraud.

17 In each place, there's a space to answer as to each
18 defendant guilty or not guilty.

19 Question No. 5, which we haven't gotten to but will in
10:30 20 just a moment, refers to Count 2, and that is the federal
21 programs bribery. Again, it has a place to check off not
22 guilty or guilty for both of the defendants.

23 Then questions six, seven and eight refer only to the
24 defendant John Wilson. They do not involve the defendant
25 Abdelaziz.

1 Question six, which is broken into three parts, says
2 "The defendant, John Wilson, on the charges of wire fraud and
3 honest services wire fraud with respect to", and they're broken
4 out into three separate matters. The first one involves the
5 \$500,000 wire transfer to a bank account. It refers to that
6 one. Then there's a place to check off not guilty or guilty.
7 The second one refers to a telephone call on October 27 of
8 2018. And the third to a wire transfer on December 11. Each
9 have a place to check with respect to Wilson not guilty or
10:31 10 guilty.

11 Turning over to the last page, paragraph 7 refers to
12 federal programs bribery, again, broken into two separate
13 subsections, one referring to a \$500,000 wire transfer on
14 October 17 of 2018 and the second one on December 11, 2018,
15 again places to check off not guilty or guilty.

16 Finally, paragraph 8 refers or asks the defendant John
17 Wilson on the charge of willfully filing a false tax return and
18 a place for you to check those off.

19 After that, you'll see an instruction that says "Your
10:32 20 deliberations are complete. The foreperson will sign the
21 verdict form and notify the marshal", et cetera.

22 So what I'd like to you do -- you understand this is
23 the verdict form you'll have in the jury room. If you'll put
24 it down, we're going to talk about Count 2, which refers to the
25 question No. 5 and the succeeding questions after that.

1 Count 2 charges both the defendants with a second
2 conspiracy. In particular, the Indictment alleges that the
3 defendants, along with others, conspired to commit federal
4 programs bribery, that is, quote, to corruptly give, offer and
5 agree to give anything of value to any person, with intent to
6 influence and reward an agent of an organization, to wit,
7 agents of USC, in connection with any business, transaction and
8 series of transactions of USC involving anything of value of
9 \$5,000 or more, that is, in exchange for facilitating the
10 admission to USC for the defendants' children, where USC
11 received benefits in excess of \$10,000 under federal programs
12 involving grants, contracts, subsidies, loan guarantees,
13 insurance or other forms of federal assistance in any one-year
14 period, unquote.

15 All of the instructions that I previously given you
16 generally relating to conspiracy in the context of Count 1
17 apply to Count 2.

18 Specifically, the government must prove beyond a
19 reasonable doubt that, first, the agreement specified in the
20 Indictment, and not some other agreement or agreements existed
21 between at least two people to commit the crime of federal
22 programs bribery and, second, the defendant then under
23 consideration willfully joined the agreement.

24 In addition to those two elements, the conspiracy
25 charged in Count 2 requires proof of a third element, namely,

1 that at least one of the members of the conspiracy committed an
2 overt act in furtherance of it.

3 The venue requirement for Count 2 is slightly
4 different than for that for Count 1. For you to return a
5 guilty verdict on conspiracy charged in Count 2, you must find
6 that the government has proved, by a preponderance of the
7 evidence, that an overt act in furtherance of the conspiracy
8 charged in Count 2 occurred in Massachusetts.

9 I will now provide you with instructions regarding the
10:35 10 elements of the underlying crime of the conspiracy charged in
11 Count 2, federal programs bribery.

12 As previously noted, Count 2 of the Indictment charges
13 both defendants with conspiracy to commit the underlying
14 offense of bribery relating to an organization that receives
15 federal funds in violation of Section 666(A)(2) of the United
16 States Code. The elements of the underlying offense of federal
17 programs prescribe that the government must prove beyond a
18 reasonable doubt are as follows:

19 First, that at the time alleged in the Indictment,
10:35 20 Donna Heinel and Jovan Vavic were agents of USC;

21 Second, that in a 1 year period, USC received federal
22 benefits in excess of \$10,000;

23 Third, that the defendant then under consideration
24 gave, agreed to give, or offered something of value to
25 Ms. Heinel or Mr. Vavic;.

1 Fourth, that that defendant acted corruptly with the
2 intent to influence or reward Heinel -- rather, Miss Heinel or
3 Mr. Vavic with respect to a transaction or series of
4 transactions at USC;

5 And, fifth, that the value of the transaction or
6 series of transactions to which the payment related was at
7 least \$5,000.

8 As to the first element, an "agent" is a person
9 authorized to act on behalf of another person or organization.
10:36 10 Employees, partners, directors, officers, managers and
11 representatives are all agents of the organization with which
12 they are associated.

13 As to the second element, the government must
14 establish that USC received, during a 1 year period, benefits
15 in excess of \$10,000 under a federal program involving a grant,
16 contract, subsidy, loan guarantee, insurance or other form of
17 federal assistance. This does not include valid bona fide
18 salary, wages, fees or other compensation paid or expenses paid
19 or reimbursed in the ordinary course of business.

10:37 20 As to the third element, the government must prove
21 that the particular defendant gave, agreed to give, or offered
22 something of value to an agent of USC as alleged in the
23 Indictment. The statute makes no difference between offering
24 or giving a bribe and the mere offer of a bribe is just as much
25 a violation of the statute as the actual giving of one. The

1 thing of value may be tangible property, intangible property or
2 services, of any dollar value, so long as it has value.

3 It is not necessary that the payment be made directly
4 to the agent. If the payment was made to a third party or a
5 conduit for the purpose of influencing the agent, that is
6 sufficient to satisfy this element.

7 With respect to the fourth element, the government
8 must prove that the defendant then under consideration gave,
9 agreed to give, or offered something of value to the recipient
10 knowingly and corruptly and with the intent to influence or
11 reward the recipient's actions in connection with some business
12 or transaction of USC.

13 To act corruptly means simply to act voluntarily and
14 intentionally with an improper purpose or purpose to influence
15 or reward the recipient's actions. This involves conscious
16 wrongdoing or, as it has sometimes been expressed, a bad or
17 evil state of mind.

18 In considering this element, remember that it is the
19 defendant's intent, at least in part, to influence the
20 recipient's actions that is important, not the subsequent
21 actions of the recipient or the organization. Thus, the
22 government does not have to prove that the recipient accepted
23 the bribe offer or that the bribe actually influenced the final
24 decision of the agent or USC. It is not even necessary that
25 the recipient had the authority to perform the act that the

1 defendant sought.

2 As to the fifth element, the government must prove
3 beyond a reasonable doubt that the value of the transaction to
4 which the payment related was at least \$5,000. To establish
5 this element, the government must prove that the particular
6 defendant intended to influence or reward the recipient in
7 connection with any business or transaction or series of
8 transactions of USC involving anything of value of \$5,000 or
9 more. If you find that the business or transaction in question
10:40 10 had a value of at least \$5,000, this element is satisfied.

11 The government is not required to prove that the
12 defendant paid or offered at least \$5,000. It is the value of
13 the business or transaction that the bribe was intended to
14 influence or reward that is important for the purpose of this
15 element.

16 Now, as to Counts 6, 8 and 9, those counts of the
17 Indictment charge the defendant Mr. Wilson with substantive
18 counts of wire fraud and honest services wire fraud.

19 Count 6 charges defendant Wilson with wire fraud and
10:40 20 honest services wire fraud in connection with a \$500,000 wire
21 transfer on or about October 17, 2018, to a bank account in the
22 name of the Key Worldwide Foundation.

23 Count 8 charges the defendant, Mr. Wilson, with wire
24 fraud and honest services wire fraud in connection with an
25 October 27, 2018 telephone call with William "Rick" Singer.

1 Count 9 charges the defendant, Mr. Wilson, with wire
2 fraud and honest services wire fraud in connection with a
3 \$500,000 wire transfer on or about December 11, 2018, to a bank
4 account in the name of the Key Worldwide Foundation.

5 In explaining the conspiracy charged in Count 1 and
6 the objects of that conspiracy, I have previously instructed
7 you on the elements of wire fraud and honest services wire
8 fraud. I will not repeat those instructions here.

9 As to Counts 11 and 12 of the Indictment, they charge
10:41 10 the defendant, Mr. Wilson, with substantive counts of federal
11 programs bribery.

12 Count 11 charges the defendant, Mr. Wilson, with
13 federal programs bribery in connection with a \$500,000 wire
14 transfer on or about December 11, 2018, to a bank account in
15 the name of the Key Worldwide Foundation for the benefit of the
16 sailing coach at Stanford University.

17 Count 12 charges the defendant, Wilson, with federal
18 programs bribery in connection with a \$500,000 wire transfer on
19 or about December 11, 2018, to a bank account in the name of
10:42 20 the Key Worldwide Foundation for the benefit of a fictitious
21 senior women's administrator at Harvard University.

22 I have previously instructed you on the elements of
23 federal programs bribery. I will not repeat all of those
24 instructions here. However, I will remind you of the five
25 elements that the government must prove in the context of

1 Counts 11 and 12 of the Indictment, which are:

2 First, as to Count 11, that at the time alleged in the
3 indictment, the sailing coach of Stanford university was an
4 agent of Stanford, and as to Count 12, the defendant believed
5 that the fictitious "senior women's administrator" was an agent
6 of Harvard;

7 Second, that in a one-year period, Stanford, as to
8 Count 11, and Harvard, as to Count 12, each received federal
9 benefits in excess of \$10,000;

10:43 10 Third, that the defendant gave, agreed to give, or
11 offered something of value to an individual who he believed to
12 be an agent of Harvard, as to Count 11 -- I'm sorry -- an agent
13 of Stanford as to Count 11 and Harvard as to Count 12;

14 Fourth, that the defendant Wilson acted corruptly with
15 the intent to influence or reward an agent of Stanford, as to
16 Count 11, and an agent of Harvard, as to Count 12, with respect
17 to a transaction or series of transactions of the respective
18 universities;

19 And, five, that the value of the transaction or series
10:44 20 of transactions to which the payment related was at least
21 \$5,000.

22 Finally, Count 13 of the Indictment charges defendant
23 Wilson with willfully filing a false federal income tax return.

24 For you to find Mr. Wilson guilty of that charge, the
25 government must prove each of the following elements beyond a

1 reasonable doubt:

2 First, that the defendant Wilson made or caused to be
3 made a federal income tax return for the year in question,
4 namely 2014, that he verified to be true;

5 Second, that the tax return was false as to a material
6 matter;

7 Third, that Wilson signed the return willfully and
8 knowingly -- knowing that it was false;

9 And, fourth, that the return contained a written
10:45 10 declaration that it was made under the penalty of perjury.

11 A "material" matter is one that is likely to affect
12 the calculation of tax due and payable, or to affect or
13 influence the Internal Revenue Service in carrying out the
14 functions committed to it by law, such as monitoring and
15 verifying tax liability. A return that omits material items
16 necessary to the computation of taxable income is not true and
17 correct.

18 I have previously instructed you as to the meaning of
19 the term "willfully" but, just to remind you, it means to act
10:45 20 voluntarily and intelligently and with the specific intent to
21 do something that the law forbids, that is to say, with bad
22 purpose either to disobey or disregard the law and not by
23 ignorance or mistake.

24 Recall that intent may be inferred from the
25 surrounding circumstances, and that if the defendant then under

1 consideration acted in good faith, he cannot be guilty of the
2 crime. Again, the burden to prove intent, as with all other
3 elements of the crime, rests with the government.

4 You'll be glad we are now at part three.

5 When you go to the jury room to begin considering the
6 evidence in this case, the foreman, Mr. Ayles, will assure that
7 every juror is present during all of your deliberations and
8 that all jurors, the foreman included, will have equal and full
9 opportunity to participate in your deliberations.

10:46 10 All of the exhibits that have been admitted into
11 evidence will be able to you physically and you will be able to
12 listen to the audio recording dollars, if you choose. There is
13 also a large, touch-screen computer in the jury room upon which
14 you will be able to access the exhibits and the Indictment
15 electronically.

16 I am told that operating the machine is very simple.
17 If you have any difficulty understanding the technology, you
18 can access a short tutorial film by pressing a button in the
19 lower left-hand corner of the screen.

10:47 20 Once you are in the jury room, if you need to
21 communicate with me, the foreman will send a written signed
22 message to me. If you do send a written message to me, I will
23 discuss it with counsel for both sides before responding to
24 you, so please continue your deliberations to the extent you
25 are able during the time it takes me to respond to your

1 question. Do not stop your deliberations while you wait for a
2 responsibility, and do not tell me how you stand, either
3 numerically or otherwise, on any issue before you, until after
4 you have reached a verdict.

5 On matters touching simply on the arrangements for
6 your meals, schedule and convenience, you are free to
7 communicate with the marshal orally rather than in writing.
8 You are not to communicate with anyone other than me about the
9 case, however, and then only in writing.

10:48 10 I have read to you what is called a verdict form. The
11 verdict form is simply the written notice of the decision that
12 you reach. You will have the original and copies of this form
13 in the jury room with you and, when you have reached your
14 verdict, you will have your foreman fill in, date, and sign the
15 original to state the verdict upon which you agree.

16 You will then report in writing to the marshal that
17 you have reached a verdict, after which you will be invited to
18 return with your verdict to the courtroom.

19 Your verdict of not guilty or guilty must represent
10:49 20 the individual verdict of each juror as to whether or not each
21 element of the charge against the defendant then under
22 consideration is proved beyond a reasonable doubt. Your
23 verdict must be unanimous.

24 It is my practice, absent special circumstances, to
25 allow a jury to recess before dinner and begin deliberations

1 again in the morning of the next regular court day. In this
2 case, that would be tomorrow, Friday.

3 It is not quite time for you to start deliberating. I
4 will have a sidebar conference with counsel and you may be at
5 ease for a few minutes. I will then return with a final
6 instruction to give to you before you retire to deliberate.

7 I will see counsel at sidebar.

8 *** BEGINNING OF SIDEBAR ***

9 THE COURT: This is on behalf of defendant Abdelaziz.

10:50 10 Mr. Smart?

11 MR. SHARP: Sharp.

12 THE COURT: Excuse me, Mr. Sharp.

13 MR. KENDALL: We will join in each other's objections,
14 your Honor.

15 THE COURT: Okay. Mr. Sharp.

16 MR. SHARP: We object to the statement as to the
17 essential wiretaps being unlawful for the reasons stated in the
18 briefing.

19 We object to the Court not instructing on pretrial
10:50 20 publicity.

21 We think the Court misstated during the instruction on
22 reasonable doubt, that the defendant has a burden to prove
23 something. I believe that was a misstatement. We all heard
24 that.

25 THE COURT: What was it that you heard?

1 MR. SHARP: That your Honor said the defendant,
2 misspoke.

3 LAW CLERK: It was the settled conviction language, I
4 believe, your Honor. Essentially, instead of saying "do not
5 have a settled conviction", I believe it was "you have a
6 settled conviction".

7 THE COURT: Do you have a page?

8 MR. KENDALL: It was right after the presumption of
9 innocence, your Honor, when you said there was no burden on the
10:51 10 defendant.

11 MR. SHARP: Should I continue?

12 We object to the description of the conspiracy. It's
13 not the conspiracy alleged in the indictment. The conspiracy
14 alleged in the indictment related to the SAT, test cheating,
15 other matters, other universities, Georgetown. The government
16 has the burden of proving the conspiracy alleged in the
17 indictment and not some other conspiracy.

18 THE COURT: I thought I said that about six times.

19 MR. SHARP: Well, your Honor, we object to the not
10:52 20 discussing the SAT test cheating and the other universities at
21 issue in Count 1. Count 1 is broader than USC.

22 We object that the Court --

23 THE COURT: Is that going to be redacted from the
24 version of the indictment that goes to the jury?

25 MR. KENDALL: It hasn't been.

1 THE COURT: I thought you had an agreement as to what
2 was and what was not redacted?

3 MR. SHARP: We don't believe it should be redacted.

4 MR. KENDALL: It shouldn't be. They've alleged this
5 overarching conspiracy. They can't prove a smaller count of
6 USC. They have to prove this overarching conspiracy.

7 MR. SHARP: We object to the honest services
8 instruction that the defendant has to intend that a fiduciary
9 duty to be breached.

10:52 10 We object to the instruction that all employees owe
11 fiduciary duties to their employer.

12 We object to the failure to give a spoliation charge,
13 a failure to give a collect evidence charge, failure to
14 adequately instruct on good faith, including the instruction
15 that the government bears the burden of proving the absence of
16 good faith beyond a reasonable doubt and the defendant does not
17 bear any burden on good faith, failure to instruct collective
18 knowledge as set forth at docket 2015, failure to remind the
19 jury that Singer's testimonial statements cannot be used as
10:53 20 evidence, including as evidence of venue when he says "I am in
21 Boston", failure to refer to AUSA's Frank statements that
22 e-mails sent by Singer could prove defendants' knowledge when
23 only the defendants' actions and words can prove their intent
24 to join the conspiracy.

25 We object to permitting the jury to consider whether

1 there is venue in this case on Count 2 when there is no factual
2 predicate for venue on Count 2, especially in light of AUSA
3 Frank's closing argument referring to a tax filing from Lynn
4 Massachusetts which relates to a separate tax charge;
5 permitting the jury to consider a theory of conviction based
6 upon one part of an entity, the Athletics Department of USC,
7 defrauding another part of the same entity, the Admissions
8 Department of USC. We believe this theory of conviction is
9 contrary to law.

10:54 10 We object to permitting the jury to consider a theory
11 of conviction for 666 bribery and honest services fraud where
12 there is no factual support because the government failed to
13 establish what, if any, honest services Donna Heinel or Jovan
14 Vavic owed to the University of Southern California; permitting
15 the jury to consider theories on conviction on Counts 1 and two
16 that the defendants entered into an overarching coast to coast
17 conspiracy when there has not been sufficient factual
18 foundation established at trial.

19 We object to the instruction on multiple conspiracies
10:55 20 to the extent inconsistent with that set forth at docket 2015.

21 For both counts, failure to provide a condonation
22 instruction when such instruction was warranted. We object to
23 the Court's failure to object to both theories of condonation
24 as set forth in *United States versus Joslin* 206 F.3rd 144:
25 First, that condonation goes to intent and, second, that there

1 could be no scheme to defraud where the purported victim knew
2 of the fraud and, in fact, benefitted from it. The jury should
3 have been able to consider this theory for Count 1 and Count 2,
4 property fraud, honest service fraud.

5 For Count 1 in particular, failure to instruct on the
6 overt act requirement; failure to instruct that an admissions
7 slot is not property or, in the alternative, not submitting the
8 question to the jury of whether an admissions slot is property;
9 failure to permit the jury to consider whether the
10:56 10 co-conspirators owed a fiduciary duty to USC, but instead
11 finding that because the co-conspirators were employees, they
12 necessarily fiduciaries; for the honest services count,
13 permitting the jury to consider a theory of honest services
14 that is contrary to law that a payment to a USC athletic
15 program is a bribe or kickback when the entity that was
16 purportedly deprived of its honest services was the University
17 itself; permitting the jury to consider a theory of conviction
18 that there could be honest services fraud where a payment is
19 made to a fund controlled by a coconspirator or where a
10:56 20 coconspirator benefits professionally from such payments, even
21 where it is made to an victim entity when there is no factual
22 predicate in the record.

23 We object to the failure to instruct the jury that
24 intent to deceive alone is not enough for honest services
25 fraud; that a payment to the entity deprived of its honest

1 services cannot be a bribe or kickback under the *Skilling* case;
2 that a bribe requires a private payment or private gain
3 personal benefit of the employee or some third party that is
4 not the victim entity; that salary, wages, psychic benefit,
5 such as basking in superior's praise or collateral professional
6 benefit cannot be the bribe or kickback itself; that a gratuity
7 is not by bribe or kickback; that foreseeable harm is an
8 element of honest services fraud; failure to adequately
9 distinguish for the jury between a legal and illegal quid pro
10:57 10 quo, therefore, permitting the jury to convict the defendant on
11 proof of a legal quid pro quo.

12 Objection to the instruction that a bribe can be a
13 payment to a victim as contrary to establish law.

14 Count 2, failure to clearly instruct on the corrupt
15 element of the statute, meaning that under the Court's
16 instructions, the jury could convict the defendants for what
17 was a legal quid pro quo.

18 Failure to properly describe a bribe as a payment to a
19 particular individual -- actually, strike the last part.

10:58 20 Failure to properly define a bribe as something other
21 than a payment to the victim, an entity that would benefit the
22 victim; failure to state the bribe requires private payment or
23 private gain or personal benefit to an employee; that a
24 gratuity is not a bribe; that a psychic benefit basking in
25 superior's praise, collateral professional benefit, et cetera,

1 cannot be a bribe or kickback; failure to instruct that
2 foreseeable harm is an element of the statute; failure to
3 instruct an official act is an element; failure for both
4 Counts 1 and two, failure to provide the specific intent
5 instructions set forth at docket 2015.

6 The Court did not instruct that "corrupt intent" means
7 the defendant knew that he was making a bribe, which permitted
8 the conclusion that purely legal contact and legal quid pro
9 quos, that the jury could convict the defendants for making
10:59 10 purely legal conduct, including purely legal quid pro quos, and
11 the Court did not specifically instruct on good faith with
12 respect to Count 2.

13 That's all I have, your Honor.

14 MR. KENDALL: Your Honor.

15 THE COURT: Wait a minute. So what are you saying?
16 At the end of this with respect to reasonable doubt, I was to
17 say reasonable doubt exists when after weighing and considering
18 all the evidence using reason and common sense jurors cannot
19 say that they have a settled conviction on the truth of the
11:00 20 charge?

21 MR. SHARP: I believe you left out the word "cannot",
22 your Honor, in your oral remarks.

23 THE COURT: So I said "jurors can"?

24 MR. SHARP: I think it was the opposite of whatever it
25 was. It was either "can" or the word is missing.

1 THE COURT: Let me hear the rest. I take it
2 Mr. Kendall wants to add.

3 MR. KENDALL: Yes, your Honor.

4 MR. SHARP: For the record, we join in defendant
5 Wilson's forthcoming objections.

6 MR. KENDALL: And we join in Aziz's. I may have some
7 redundancy because I haven't organized my notes as well as I'd
8 like.

9 I think he raised issue of misspeaking about the
10 burden is on the defendant to provide evidence.

11 I believe the language you used "settled conviction of
12 the truth of the charge when giving reasonable doubt". This is
13 Mr. Levy, who is assisting me on the jury charge, your Honor.

14 MR. LEVY: Yes. Similar instance.

15 THE COURT: What are are we talking?

16 MR. KENDALL: The Court in referring to settled
17 conviction of the truth of the charge.

18 MR. LEVY: This is the issue we were just discussing.
19 "Cannot" is I believe what was left out. That's what we heard.

11:01 20 THE COURT: All right.

21 MR. KENDALL: With respect to -- you gave the
22 instruction it's not against the law to donate money to a
23 university in the hope that admission would be more likely. I
24 don't think that's strong enough, your Honor. We need an
25 instruction that says there's nothing against the law to donate

1 money to a university in order to influence an admission
2 decision. That's clearly what my client was told about the
3 president of Harvard. We think that was clearly Miss Chassin's
4 testimony. It has to be much stronger than a hope. It can be
5 to influence an admission decision, if that's what a school
6 willing to do.

7 Your Honor, with respect to all of the honest services
8 charges in both the conspiracy and the substantive counts, to
9 obtain admission to USC or to obtain admission to a university,
10 as we discussed with you before, was not property. We view it
11 as recognized under the mail or wire fraud statutes. That will
12 be every time that issue comes up with each of the counts with
13 our client.

14 MR. LEVY: For the record, your Honor, Mr. Kendall is
15 referring both to the wire fraud statute as well as honest
16 services statute. Both charges.

17 MR. KENDALL: For the mail as well. For all of the
18 fraud statutes.

19 With respect to Harvard and Stanford, we think there
20 has to be some definition of what's the intangible right to the
21 honest services of the coach and administrator. There's no
22 guidance to them and there's no evidence really to say what
23 their relationship was, what they owed to the University, what
24 did the University expect from them. We had a little bit of
25 that at USC where Chassin said coaches -- there's no rule to

1 prohibit a coach from taking into effect a donation, but we
2 don't have any guidance of any kind for Harvard and Stanford.

3 With respect to every time the issue of bribery came
4 up, both with respect to the mail and wire fraud statutes as
5 well as the federal program bribery statute, I think the Court
6 has to give direction that they have to show that in order to
7 be a bribe, that the money benefitted the individual personally
8 in a corrupt way and to the detriment of their employer.

9 You know, it is the issue that we have fought over,
11:03 10 your Honor. He obviously have to incorporate our briefing on
11 this, but a donation to the university's bank account or to the
12 university's program can in no way be a bribe for either
13 federal program bribery or any of the fraud statutes for the
14 conspiracy or substantive. When you said you corruptly give
15 something of value to a person with respect to the program
16 bribery statute, I think we have to clarify that it goes to the
17 person and not the university.

18 Again, whenever the phrase "bribes" or "kickbacks"
19 come up, we think that's the same issue. Whenever any fraud
11:04 20 statute, the issue of property comes up, it has to be indicated
21 that admission to USC or admission to any university is not
22 sufficient.

23 We do believe impossibility is a defense. The Court
24 did not give that instruction. You indicated you were not
25 going to. We believe in impossibility and legal impossibility,

1 issues that we raised with you earlier. Both should have been
2 included.

3 MR. LEVY: Your Honor, with respect --

4 THE COURT: Is there a double team?

5 MR. KENDALL: If I have the time, I'll take my notes.

6 THE COURT: In this case, I'll let it go.

7 MR. LEVY: Understood, your Honor. I'll be very
8 brief. With respect to your Honor's initial description of
9 federal program bribery in the overview of the counts, you
11:05 10 referenced that \$10,000 in federal funding was required as
11 opposed to benefits. We object to that. The cite for that is
12 *Fernandez* case 915 F.3rd 2 through 4.

13 With respect to your Honor's statement in discussing
14 the fraud counts that concealment or omission could form a
15 basis for liability, we incorporate our prior papers, ECF 2076
16 at 17, that there was no --

17 THE COURT: Keep your voice down. High enough so heck
18 she can hear you but low enough so the jury isn't party to this
19 conference.

11:06 20 MR. LEVY: Your Honor, with respect to materiality, we
21 object to the Court's description that a reasonable person's
22 standard applied. We believe that, under the *Apalon* case, it
23 is actually -- the standard is the decision-maker itself and
24 the information that they would want as opposed to a reasonable
25 person.

1 We object to a willful blindness instruction that was
2 given. Our papers are ECF 2078 at 18.

3 On the fiduciary duty issue, we believe that, as a
4 matter of law, the jury should have been instructed that state
5 law controls whether or not an individual is a fiduciary as
6 opposed to federal law. And we believe that issue is left open
7 in *Skilling* and incorporate our prior briefing on that.

8 Alternatively, excuse me, at one point your Honor had
9 said an employee or fiduciary in discussing quid pro quo with
11:07 10 reference to the honest services charge. We object. It would
11 have to be a fiduciary.

12 We object to the official act requirement not being
13 included with respect to the federal program bribery charge and
14 the *Martinez* case that we cited our papers on that you
15 discussed this morning. They're incorporated there.

16 With respect to the official act requirement, your
17 Honor did not include the language from *McDonough* where the nap
18 out case 332 F. sub 533 clarifying that an official act needed
19 to be something like a contract filing a lawsuit or something
11:07 20 like that.

21 With respect to federal program bribery and your
22 Honor's instructions regarding gives offers, agrees to give, we
23 believe the jury should have been instructed that an offer is
24 not an offer unless the counterparty actually receives the
25 message, so to speak.

1 Same thing with the agreeing to give. We believe your
2 Honor should have instructed there is no agreement to give
3 unless the counterparty has solicited the actual counterparty
4 and the actual defendant at issue, in turn, agreed to give a
5 bribe.

6 With respect to your Honor's description of
7 willfulness, in particular for Count 13, we object to it not
8 being put into language in pattern instructions. The pattern
9 is 4.267206. It's the violation of a known legal -- voluntary
10 violation of a known legal duty.
11:08

11 MR. KENDALL: It's the elevated level of intent for
12 tax charge, your Honor.

13 MR. LEVY: Your Honor, with respect to the tax count,
14 we believe the jury should have been instructed on the specific
15 theory that the government has restricted itself to in this
16 case, namely, the issue that Jovan Vavic was bribed and,
17 therefore, the deductions were improper or, alternatively, that
18 the deductions at issue were not true business expenses.

19 One moment, your Honor. With respect to aiding and
11:09 20 abetting, we understand the government has taken the position
21 that the jury should not be instructed on that, however, our
22 position is that the jury should be affirmatively instructed
23 that aiding and abetting cannot form the basis for a conviction
24 in this case.

25 With respect to official act, your Honor, we believe

1 the jury should have been expressly instructed that, as a
2 matter of law, merely expressing support or writing a letter of
3 recommendation cannot be an official act and that the Court
4 should give guidance on what requires pressure for the federal
5 programs bribery statute. Our citations are the *Jefferson* case
6 289 F.3rd 717, as well as the Third Circuit's decision in
7 *Falter* 914 F.3rd 112.

8 With respect to the honest services charges against
9 Mr. Wilson in particular, we believe your Honor should have
10 instructed that the jury had to find beyond a reasonable doubt
11 that there was, in fact, a SUBCO like process that existed as
12 those institutions and that the defendant, at a minimum, knew
13 facts under which he believed the employees at issue were
14 fiduciaries under Massachusetts and California law,
15 respectively.

16 We also object to not having a venue instruction that
17 mentioned a preponderance of the evidence with respect to
18 Count 1 which lines up with our position that an overt act is
19 required and the First Circuit has not resolved the issue
20 definitely whether an overt act is required for wire fraud.

21 MR. KENDALL: Your Honor, I have a few others.

22 When you gave --

23 THE COURT: Who is this on behalf of? Whose was his
24 on behalf of?

25 MR. KENDALL: We're doing it jointly, your Honor. I

1 did not have time to go through my notes.

2 THE COURT: Okay.

3 MR. KENDALL: You gave an instruction about the false
4 statement that you said that the government has to prove that
5 there's a false statement that relates to a material fact. I
6 thought you had indicated yesterday you were not going to use
7 the "relate to" language, it would have to be a false statement
8 about a material fact.

9 Second, your Honor, with the willful blindness
10 instruction, I'm not sure if this was said or not. I don't
11 believe I heard that you said they cannot use willful blindness
12 to consider whether someone joined a conspiracy. It can only
13 be used for other issues about, but not whether or not they
14 joined the conspiracy.

15 With respect to -- let me go through my notes.

16 With respect to the definition of the fiduciary duty,
17 you instructed that the employee has a fiduciary duty only to
18 act for the benefit of the employer, your Honor. I think the
19 fiduciary duty has to be defined by the actual expectations or
11:12 20 requirements of the individual in the applicable state law, but
21 also their contract and the customs and practices of the
22 institution.

23 With respect to participation of the kickback and
24 bribery scheme, we made a reference that they have to prove
25 that they received benefits from a third party. I think it has

1 to be that it's actually a corrupt bribe, as we previously
2 described it in the traditional terms.

3 When you defined "breach of fiduciary duty", you used
4 the quid pro quo language, which we've already discussed, we
5 think is not adequate to show there's sufficient corrupt intent
6 and deprivation of the interests of the principal in the
7 fiduciary relationship.

8 Again, when you said "they need not state the quid pro
9 quo in express terms", given the problems with the quid pro quo
11:13 10 and definition of bribery, we think that was improper as well.

11 Then you instructed that the bribes and kickbacks are
12 required or in exchange for an official act. Again, your
13 Honor, it's the definition of bribes and kickbacks for an
14 official act. They are donations and would not be a violation
15 of any of the fraud statutes or the bribery statutes.

16 You used the language "in the course of conduct of
17 things of that value that flow to the employee or fiduciary".
18 Again, the issue of whether or not the donation to the
19 University could be included in that or not we object to.

11:14 20 Again, a bribe is simply a payment to or payments to
21 third parties, even to the employing university, we object to.
22 Any official act that's any matter within the scope, including
23 the formal exercise of the organization's power, but then you
24 said "to advise another official to take an official act would
25 be within that scope", and we think that language "to advise

1 another" -- you said to "exert pressure or advise another
2 official to take some action". We think that's beyond what the
3 law allows.

4 We've objected to the verdict form already. You're
5 aware of our objections.

6 Then, your Honor, in discussing the federal bribery
7 statute, the Court gave instructions the defendants gave
8 something of value to Heinel and Jovan Vavic and they acted
9 corruptly to reward or to influence, Heiel and Vavic. They
10 offered to give a bribe and, your Honor, that's again bribery
11 language we've discussed before.

12 I think when the Court gave the instruction if the
13 money was paid to a third party or a conduit, it creates some
14 ambiguity, because if the third party is the university, that's
15 not something prohibited by the statute.

16 I'm towards the end, your Honor. I thank you for your
17 patience.

18 You spoke about a bad or evil state of mind about what
19 the jury is to consider. Again, I think that raises the issue
11:16 20 of whether the money is going to the University and that's not
21 within the scope of a bad or evil state of mind.

22 Same thing with the influence or received, to
23 influence or receiver the recipient. We have to put in that
24 it's the corrupt personal benefit.

25 Your Honor, I think you misspoke on one of the

1 instructions. When you were talking about Counts 11 and 12,
2 the money I think you said for both of them was transferred
3 both times in December 2018. I think one it was October 2018
4 and the other time it was December. I think it was just a
5 misspeaking.

6 Then when you gave the elements of the federal program
7 bribery for Counts 11 and 12, you said "give benefits to an
8 agent and reward an agent". Again, we think it raises the
9 issue it has to be corrupt bribery for the benefit of the
10 person, as we extensively discussed.

11 Mr. Levy raised with the tax charge. We think you
12 have to instruct them that they have to prove that Mr. Wilson
13 intentionally violated a known legal duty for a tax charge.

14 This is my last few issues, your Honor.

15 Your Honor, we do object to the narrowing of Count 1
16 to just USC given the *Kodiakas* issues and the *Petriezzello*
17 issues. I think the government has to meet the burden that
18 it's assumed.

19 You said that the agent did not have to have the
20 actual authority to do the acts that were asked of them. We
21 believe that it should be the opposite of that.

22 Then if I can just go through my last few notes, your
23 Honor.

24 The definition that a conspiracy should be two or more
25 people, we raised that with you before, your Honor. Given the

1 nature of the conspiracies, they involve far more than two
2 people and it should not be limited to just two or more people.

3 The Court used concealment language. I don't know if
4 the Court used omissions. The Court used concealment and
5 omissions and half-truths of material facts. I don't think
6 those are at issue in this case and I don't think that would be
7 the appropriate language to instruct the jury on. Same with
8 respect to a false statement, assertion of a half-truth,
9 knowing concealment, without saying that they must be material
11:19 10 if those things did occur. In addition, we object to them
11 being said. If they did occur, they have to be about something
12 that's a material fact.

13 I believe upon your instruction, your Honor, the case
14 has been narrowed to they have to prove that there was a
15 falsified athletic profile as part of any scheme or artifice to
16 defraud or as part of any bribery scheme. That's how they've
17 narrowed it, and I believe that's how your court order had
18 recognized it. I think the jury has to be instructed for that
19 for each one they have to prove that there's a falsified
11:20 20 athletic profile for every count in the case, even with the tax
21 one, because the tax one turns on whether or not there was a
22 bribe or improper payment made, violation of federal bribery
23 law.

24 MR. LEVY: Your Honor, lastly, with respect to the
25 honest services counts at issue in this case, both the

1 conspiracy and the substantive counts, we believe the jury
2 should have been instructed that the relevant honest services
3 are controlled by the customs, practices and policies of the
4 Athletic Department, which is where the employees the issue
5 either worked or supposedly worked.

6 MR. KENDALL: For USC. And then for wherever the
7 senior women's administrator and the Stanford coach worked.
8 Done?

9 MR. LEVY: Yes.

11:20 10 MR. KENDALL: Thank you for your patience, your Honor.

11 THE COURT: Government?

12 MR. FRANK: Does your Honor want me to respond to
13 anything specifically?

14 THE COURT: This is for the benefit of the parties.
15 You're free to say anything you want.

16 MR. FRANK: May I have one moment, your Honor?

17 THE COURT: Yes.

18 MR. KENDALL: Your Honor, when Mr. Frank returns, we
19 have one other thing to mention.

11:22 20 THE COURT: Mr. Frank.

21 MR. FRANK: Your Honor, we don't believe there's been
22 an improper narrowing of the charges the Court laid out the
23 scope of the conspiracy. We believe the conspiracy was
24 accurately set forth by the Court and there was evidence of the
25 manner in which the conspiracy set forth, so we don't believe

1 there's anything to correct there.

2 With respect to the allegations, the suggestion that
3 the Court misspoke at a couple of points in the giving of the
4 charge, we believe that -- we didn't hear that and if the Court
5 is inclined to correct something, we would suggest that we
6 first check with the court reporter rather than unnecessarily
7 draw attention to one component of the charge over other
8 components of the charge, which we believe would be the
9 consequence of revisiting those things.

11:22 10 With respect to everything else, we'll rest on our
11 papers and the Court's prior orders.

12 MR. SHARP: We don't object to checking with the court
13 reporter of course, if it can be done.

14 With respect to the Indictment, the copy of the
15 Indictment that the jury will receive that we agreed upon,
16 those have allegations with respect to Georgetown, other
17 universities, the SAT, the ACT. When the Court instructed the
18 jury on what the indictment charge, the Court did not include
19 those allegations and we do feel strongly that what is in the
11:23 20 indictment must be proved and that to the extent the jury might
21 be confused that those allegations appear in the indictment but
22 the Court did not refer to them.

23 THE COURT: Do you wish to respond to that, Mr. Frank?

24 MR. FRANK: The indictment charged the defendants
25 inspired to improperly gain admission to universities through

1 various manners and means as set forth in the indictment. We
2 believe the evidence showed that in the scope of the
3 conspiracy.

4 THE COURT: All right. Thank you.

5 MR. KENDALL: Your Honor, we have a couple other
6 things.

7 We object to the instruction that an official act is
8 anything within the scope of the agent's duties or actions. We
9 think there's a much higher standard we covered in the briefing
10 that we filed with the Court.

11 May Miss Papenhausen articulate anything?

12 THE COURT: No.

13 MR. KENDALL: You gave an instruction that the
14 official act could be something done in exchange for
15 facilitating for the admission when defining the \$5,000
16 requirement. You said the official act could be in exchange
17 for facilitating the admission of the defendants' children. We
18 don't believe facilitating is an official act.

19 Thank you for your patience, your Honor.

11:24 20 THE COURT: All right. I'm going to check with the
21 court reporter on one matter. Thank you, counsel.

22 *** END OF SIDEBAR ***

23 THE COURT: All right, members of the jury. You
24 probably noticed there are 15 of you and only 12 in a jury.
25 The last three jurors seated in the jury box way back when we

1 began this 3 weeks ago are alternates. That doesn't mean that
2 their job has been wasted or even that their job is over
3 because I'm going to ask you all to remain. They will not be
4 deliberating with the jury. They will remain in case I need
5 their help at a later time. They're not to deliberate
6 themselves. They can talk about anything else, but not about
7 this case.

8 The alternates, the last three jurors seated were
9 Mr. Marshal in seat 5, Miss Reyes in seat 15 -- 14 -- and
11:26 10 Mr. Callahan in seat 15.

11 So my deputy will show you a different room to be in.
12 The rest of you will be the deliberating jury.

13 Now, members of the jury, it is now time for the case
14 to be submitted to you. You may commence your deliberations.
15 All of you who are the jury must be together at all times when
16 you are deliberating. Whenever you need a recess for any
17 purpose, your foreman, Mr. Ayles, may declare a recess. Do not
18 discuss the case during a recess in your deliberations. All of
19 your discussion of the case should occur only when you are all
11:27 20 together and your foreman has indicated that deliberations may
21 proceed. This should be your procedure so that everyone on the
22 jury will have an equal opportunity to participate and to hear
23 all of what other the members of the jury have to say.

24 You may go to the jury room and commence jury
25 deliberations.

1 THE CLERK: All rise for the jury.

2 (Jury exits.)

3 THE COURT: Be seated, counsel. We need to assemble
4 all of the exhibits to be submitted in paper as well as
5 electronically. You'll need to stay here for when the clerk
6 returns.

7 Also, you need to be available within 10 minutes if we
8 have any question from the jury. So please leave your cell
9 phone numbers and ability for the deputy to reach you. If we
11:29 10 get a question, I want to be able to at least have you able
11 within ten minutes. We may not be able to talk to you that
12 quickly, but we need to have your ability.

13 Is there anything else that needs to come to the
14 attention of the Court outside the hearing of the jury?

15 MR. KELLY: No, your Honor.

16 MR. KENDALL: No, your Honor.

17 MR. FRANK: No, your Honor. Thank you. Would you
18 like us back at the end of the day or in the morning?

19 THE COURT: Yes. If we go to the end of the day, I do
11:29 20 not inquire of juries as to whether they want to go home. They
21 ask me. I haven't ever had them go beyond 5:15 before they
22 ask. If and when they ask to be excused, I will excuse them
23 and call them into the jury room and caution them with my usual
24 cautions. So it behooves you to be here toward the end of the
25 day. I can't tell you exactly what time, but during the end of

1 the day.

2 MR. KELLY: Is it the Court's practice to have us here
3 as 9:00 a.m. as well?

4 THE COURT: Yes. I greet them at 9 o'clock in the
5 morning and tell them welcome back and go to work. If you want
6 to be here, you can be. I don't require you to be. I expect
7 you will be. We're in recess.

8 (Recess taken.)

9 Clerk all rise. Thank you you may be seated.

04:59 10 THE COURT: Good afternoon, counsel. The jury has
11 asked to go home for the day. I am going to allow that
12 request.

13 Before I call them, I wanted to run by you what I
14 intend to do with the alternates. I'm going to bring the
15 alternates back in. They, of course, have not been with the
16 other 12. They've been in a separate room. I'm going to call
17 them in. They will not be in the jury box. They'll be in
18 these three seats here. I'm going to thank them for their
19 service and tell them they don't have to come in tomorrow, but
04:59 20 that I would like them to stay available in the unlikely event
21 that we would need their attendance so that they would be
22 available at telephone to come in if we needed them. That's
23 what I normally do after the first day of deliberation. I
24 would tell them also that my deputy will call them sometime
25 toward the end of day tomorrow to tell them what their

1 responsibilities are thereafter. It would be my intention,
2 unless something else happens, to not require them to remain
3 available after the end of the day tomorrow. Any problem with
4 that?

5 MR. KELLY: Your Honor, I would respectfully suggest
6 that after tomorrow if there's no verdict to keep them
7 available next week for at least a day or two given all the
8 health situation out there. If one of these 12 remaining
9 jurors get sick, and we need an alternate.

05:00 10 THE COURT: I'm certainly going do that for tomorrow.
11 We can talk about toward the end of the day tomorrow.

12 MR. KELLY: We request that the alternates be
13 instructed they can't look at the media either. I do think
14 given -- we've been lucky so far, but who knows what happens
15 with the weekend.

16 THE COURT: We'll cross that bridge when we get to it
17 late tomorrow. I'll take that under advisement.

18 THE COURT: Mr. Kendall?

19 MR. KENDALL: I join with Mr. Kelly's position.

05:01 20 THE COURT: The government?

21 MR. FRANK: We agree, your Honor.

22 THE COURT: We'll call the jury. The 12 deliberating
23 jurors will be seated in the box. My deputy is going to tell
24 the two at the end to fill in the blank seat in the front row.
25 Of course, the back row is the same because the alternates were

1 the last three anyway. The three alternates will be seated
2 outside the box here.

3 Call the jury.

4 (Jury enters.)

5 THE CLERK: Thank you. You may be seated.

6 THE COURT: Good afternoon, jurors, and /TKPWA,
7 alternates. You've asked to go home. You've worked hard
8 today. You deserve to have an affirmative response to that.
9 It's a little bit after 5 o'clock. I am going to allow you to
05:05 10 recess for the evening and return tomorrow morning at 9:00 a.m.
11 to continue your deliberations.

12 Now, it is especially important now that you are a
13 deliberating jury that you not consult with anybody else or
14 read anything in the media or let anybody talk to you about
15 what's in the media, and that might happen. Somebody's going
16 to say, I saw in the newspaper. You say, no, I cannot talk
17 about that, I cannot think about that, because what I am doing
18 is I'm part of a jury that is deliberating toward a verdict.
19 You are to honor my instructions. It's more important than
05:05 20 ever before.

21 With respect to the alternates, I'm going to permit
22 you not to come in tomorrow, but I want you to remain available
23 by the phone in the unlikely event we need your attendance.
24 That doesn't mean you can't do anything. I want you to be
25 available and give my deputy your cell phone numbers, if you

1 have them, and just remain available. You too are not allowed
2 to /SRAO*U any media or talk to anybody about this case. You
3 are still part of this jury and the instructions that I give to
4 the deliberating jury apply equally to the alternates. So,
5 please, all of you, honor my instructions. You deserve to have
6 a night off to think about anything else. Maybe you can watch
7 the Red Sox. I don't want you to think about this case or talk
8 about it.

9 I'll see you tomorrow morning at 9 a.m. And I will
05:06 10 greet you at 9 a.m. before you start your deliberations. Those
11 alternates don't have to come. You have to remain available.
12 My deputy will call you sometime during the day to advise you
13 about any future responsibilities, but you will hear from her
14 tomorrow. Okay? Have a pleasant evening. I'll see the
15 deliberating jury tomorrow morning at 9 a.m.

16 THE CLERK: All rise for the jury.

17 THE COURT: We will reconvene at 9:00 a.m. tomorrow
18 morning. Anything that needs to come to the Court's attention
19 before we recess for the night?

05:07 20 MR. KENDALL: No, your Honor.

21 MR. KELLY: No, your Honor.

22 THE COURT: Then we are in recess until 9 o'clock
23 tomorrow morning.

24 (Whereupon, the proceedings adjourned at 5:07 p.m.)
25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)

I, Kristin M. Kelley, certify that the foregoing is a
correct transcript from the record of proceedings taken
October 7, 2021 in the above-entitled matter to the best of my
skill and ability.

/s/ Kristin M. Kelley

October 7, 2021

Kristin M. Kelley, RPR, CRR
Official Court Reporter

Date